IN THE

Supreme Court of the United States

October Term, 1947.

No. 75.

MANDEVILLE ISLAND FARMS, INC., a corporation, and ROSCOE C. ZUCKERMAN,

Petitioners,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

RESPONDENT'S BRIEF.

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Statement of the Case.

The principal question presented is whether or not the activities complained of had that substantial economic effect upon interstate commerce (compare *Wickard v. Filburn*, 317 U. S. 111, 125) which the Sherman Act condemns.

The District Court held that they did not, and granted a motion to dismiss. 64 Fed. Supp. 265 [R. 100-108]. The Circuit Court of Appeals agreed and affirmed. 129 F. (2d) 71 [R. 120-121]. A petition for rehearing was duly filed and denied [R. 123], after which this Court granted certiorari. The specifications of error urged by petitioners all reflect, directly or indirectly, the basic question we have indicated above. In order to re-

solve that question, it is only necessary to apply the recognized concepts of the Sherman Act to the facts.

Since this matter was determined on a motion to dismiss, it follows that the well-pleaded *facts* set forth in the amended complaint are to be taken as true. *Glenn Coal Co. v. Dickinson*, 4 Cir., 72 F. (2d) 885, 887-8; *Alexander Milburn Co. v. Union Carbide and Carbon Corp.*, 4 Cir., 15 F. (2d) 678, 680; *International Visible Seams Corp. v. Remington-Rand, Inc.*, 6 Cir., 65 F. (2d) 540.

These facts are that for a period of three years (the so-called crop years of 1939, 1940 and 1941) the three sugar processors in California north of the 39th parallel adopted a practice of paying sugar beet growers, according to the sugar content of their beets, by a price determination formula based upon the *average* net returns from the sugar sold by all three of such processors during a given crop year.* These formulae were embodied in printed contracts which provided that the processor would furnish the seed, and the grower would plant, cultivate and harvest the crop and deliver the beets to the processor, who would then manufacture the beets into sugar. [R. 77, 96, 36-59.] *All* of these steps, it should be added, took place wholly within the State of California. It was only *after* the sugar was manufactured that any movement in interstate commerce was involved since it was the *sugar*—the finished product—which alone moved in interstate commerce.

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*Before and since the three years in question, settlement has been made by respondent with the growers on the basis of the net returns from sugar sold by *it* during the current crop year.

It is also worthy of note that, since sugar is the interstate commodity here involved, any effect of the price-fixing alleged as to the *beets* upon the price of the *sugar* is expressly disclaimed by the complaint itself. It is alleged both in the original and in the amended complaint that the sugar manufacturers *"regardless of the price at which sugar was sold from any particular refinery or from any particular manufacturer's refinery or refineries, paid all growers of sugar beets in California north of the 36th parallel, the same price for the same amount of beets of the same sugar content."** [R. 11, 76-77.] In other words, petitioners recognize that irrespective of the effect of the conspiracy charged as to the price fixing of the beets, the sugar prices were not affected. This is made even more evident when it is noted that the beets were settled for at the *end* of the crop year, on the basis of the application of the formula to the sugar sold during that year and after the net returns from the sugar to the processors had been determined; a species of "reaching back" process whereby variable net returns to the processors were averaged to reach a constant as to the beets. Under such a process the finally computed beet price could have been nothing more than a mere derivation from the sugar prices and could not possibly affect the latter in the least.

Also, in the District Court petitioners affirmatively disavowed any attempt to charge a restraint as to the *sugar*.

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*Emphasis here, as elsewhere, is supplied unless otherwise noted.

Due apparently to inadvertence, the original complaint charged a conspiracy to monopolize and restrain "trade and commerce in *sugar and sugar beets* among the several states and to unlawfully fix prices to be paid the growers of sugar beets." [R. 10.] At the argument on the motion to dismiss the complaint, the District Judge requested a clarification as to the matter of the *sugar*. Counsel for petitioners then stated that they would eliminate the reference to sugar and they did so in the amended complaint by alleging solely a conspiracy to monopolize and restrain "trade and commerce among the several states and to unlawfully fix prices to be paid the growers of sugar beets." [R. 75-76.]

It was upon the basis of this disavowal as to the *sugar* —the interstate commodity—that the District Judge ruled that no restraint upon interstate commerce was shown.

Reduced to its essentials, it will thus be seen that the case made by petitioners is one of the price-fixing of a product of the soil destined for manufacture and processing into a commodity ultimately to be shipped in interstate commerce, with any restraint or intent to restrain trade or commerce in the interstate commodity itself being distinctly disavowed.

Respondent urges the points which follow in support of its contention that the judgments below should be affirmed.

Summary of Argument.

I. The courts below did not err in holding the amended complaint insufficient for failure to state a claim under the Sherman Act.

A. The amended complaint failed to state a claim because it affirmatively appears therefrom that the activities complained of were neither in interstate commerce nor had any substantial effect or any effect whatever upon interstate commerce.

1. The intrastate planting, growing, harvesting, selling and manufacturing of farm products into a commodity destined for interstate shipment is not interstate commerce.

2. The amended complaint affirmatively discloses that the activities complained of had no effect whatever upon interstate commerce, let alone the substantial ecohomic effect condemned by the Sherman Act.

B. The amended complaint failed to state a claim because it affirmatively appears therefrom that the activities complained of did not result in any violation of or injury to the public rights which it is the purpose of the Sherman Act to protect.

ARGUMENT.

I.

The Courts Below Did Not Err in Holding the Amended Complaint Insufficient for Failure to State a Claim Under the Sherman Act.

The requirements of a complaint filed by an individual under 15 U. S. C. §15 are nowhere better stated than in *Glenn Coal Co. v. Dickinson Fuel Co.*, 4 Cir., 72 F. (2d) 885, 889, where the court said, following an earlier decision of this Court:

> "It is well known that the main purpose of the Anti-Trust Act was to protect the public from monopolies and restraint of trade and the individual right of action was but incidental and subordinate. This was well expressed by Mr. Chief Justice White in Wilder Mfg. Co. v. Corn Products Co., 236 U. S. 165, 174, 35 S. Ct. 398, 401, 59 L. Ed. 520, Ann. Cas. 1916A, 118, in the following language:
>
> "'In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute, but the remedies which it provided, were coextensive with such conceptions."

Thus, the declaration to be good must show not only damages sustained by the individual plaintiff but even more importantly a violation of public rights prohibited by the Act. It is not sufficient that the declaration shows merely a good cause of action

at common law. As was said by the Supreme Court in the Blumenstock case,* *supra*:

> 'In order to maintain a suit under this act the complaint must state a substantial case arising thereunder. The action is wholly statutory, and can only be brought in a District Court of the United States, and it is essential to the jurisdiction of the court in such cases that a substantial cause of action within the statute be set up.' "

Applying these principles to the case at bar, the deficiencies of the amended complaint immediately appear.

A. The Amended Complaint Failed to State a Claim Because It Affirmatively Appears Therefrom That the Activities Complained of Were Neither in Interstate Commerce Nor Had Any Substantial Effect or Any Effect Whatever Upon Interstate Commerce.

These beet contracts were executed before the beet seeds were even furnished to the growers or planted by them. The measure of the contract price for the beets was contractually established then and there. Then followed the growing and harvesting, the delivery of the beets to the processor and their manufacture into sugar. We also learn from the complaint that the sugar was then stored for long periods so that the sugar sold during a given crop year was mainly derived from beets grown and delivered during *previous* crop years. [R. 22, 26.]

Petitioners contend that *all* of these activities antecedent to the manufacture of the sugar not only "involved" interstate commerce, as they say, but were actually *in* interstate commerce itself. Their position is, with all respect, contrary both to reason and to authority.

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*Blumenstock Bros. Advertising Agency v. Curtis Publishing Co., 252 U. S. 436.

In this regard, it will have been noted that petitioners' briefs reveal a studied confusion as between what *is* interstate commerce, on the one hand, and the undoubted power of Congress, under the commerce clause, to *protect* interstate commerce by the specific regulation of activities which in isolation are purely local, on the other.

We thus find them arguing, for instance, that under the pattern of the Fair Labor Standards Act ("Employees engaged *in commerce* or in the production of goods *for commerce*": 29 U. S. C. §207) both categories of employees are engaged in interstate commerce; a contention which is not only directly contrary to the plain wording of the Act, but is also directly contrary to this court's opinion in the case of *U. S. v. Darby*, 312 U. S. 100, a leading case sustaining the constitutionality of the Act in question. This Court there said:

> *"While manufacture is not of itself interstate commerce*, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power 'to prescribe the rule by which commerce is governed.' *Gibbons v. Ogden*, 9 Wheat. 1, 196."

This holding as to the non-interstate character of manufacturing is wholly consistent with concepts which, in so far as the Sherman Act is concerned, have been proclaimed time and time again. There has been, in the pronouncements of this Court, little variation as to what is or is not interstate commerce as such; the differences have been as to the *effect* of the activities complained of *upon* interstate commerce; a far different matter.

Thus the earlier cases spoke of "direct" and "indirect" effect; what is now regarded as a mechanical test. And

in *Wickard v. Filburn, supra,* it was said that the true test is whether the activities complained of have a *substantial economic effect* upon interstate commerce; an eminently fair test and one which we accept without qualification.

Petitioners' obvious position is, however, that everything within the regulatory power of Congress under the commerce clause is interstate commerce in and of itself; a position which, paradoxically enough, actually constitutes an attempted and erroneous limitation upon the powers of Congress because denying it the power to *protect* interstate commerce from the impact of extraneous forces deemed inimical to it.

This erroneous view of petitioners is made evident by passages in their supplemental brief such as that on page 11, where they say that *we* argue that the matters here involved would be interstate commerce under such statutes as the Fair Labor Standards Act, the National Labor Relations Act and the like, but are not such under the Sherman Act. With all respect, we argue nothing of the sort. We do argue, and we have all along, that other enactments of Congress covering different fields, having different purposes and with different historical backgrounds, are of little value here in determining whether the activities complained of were either *in* interstate commerce or had a substantial economic effect *upon* it within the meaning of the Sherman Act. And in this we are not without support from this Court, for it also has recognized that a translation of implications from the special aspects of one statute under the commerce clause to another may lead to "pitfalls," *Overstreet v. North Shore Corp.*, 318 U. S. 131, and is in general "treacherous business." *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349.

In other words, petitioners seem to claim that anything within the purview of *any* commerce clause statute is interstate commerce *per se,* which we deny. On the other hand, we assert that the activities here complained of were neither *in* nor had any substantial economic effect *upon* interstate commerce. The issue is thus clearly drawn; and we now turn to a discussion of those two questions.

1. *The Intrastate Planting, Growing, Harvesting, Selling and Manufacturing of Farm Products into a Commodity Destined for Interstate Shipment Is Not Interstate Commerce.*

As we have seen, even under the Fair Labor Standards Act the manufacture of goods *for* commerce is not commerce itself. *U. S. v. Darby, supra.* And *a fortiori* thus must be true of acts antecedent to the manufacture such as, in our case, the planting, growing, harvesting and purchase of the beets *for* manufacture by the processor.

This conclusion is wholly in line with an unbroken line of authorities under the Sherman Act, which uniformly hold that the production and manufacture of goods or commodities is not commerce even though the finished product, as here the sugar, is destined for interstate shipment. *United Mine Workers of America v. Coronado Coal Co.,* 259 U. S. 344; *United Leather Workers International Union v. Herkert and Meisel Trunk Co.,* 265 U. S. 457; *Industrial Association v. United States,* 268 U. S. 64; *Robinson v. Suburban Brick Co.,* 4 Cir., 127 Fed. 804; *Gable v. Vonnegut Mach. Co.,* 6 Cir., 274 Fed. 66.

Thus in the *Herkert and Meisel Trunk Co.* case it was said, first quoting from *United Mine Workers v. Coronado Coal Co.*:

> "Coal mining is not interstate commerce, and the power does not extend to its regulation as such. In Hammer v. Dagenhart, 247 U. S. 251, 272, 62 L. ed. 1101, 1105, 3 A. L. R. 649, 38 Sup. Ct. Rep. 529, Ann. Cas. 1918E, 724, we said: 'The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. Delaware, L. & W. R. Co. v. Yurkonis, 238 U. S. 439, 59 L. ed. 1397, 35 Sup. Ct. Rep. 902.' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce. The same rule was followed in Gable v. Vonnegut Machinery Co., 274 Fed. 66, 73, 74.
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> The same general principles are affirmed in Heisler v. Thomas Colliery Co., 260 U. S. 245, 259, 67 L. ed. 237, 43 Sup. Ct. Rep. 83; Crescent Oil Co. v. Mississippi, 257 U. S. 129, 136, 66 L. ed. 166, 42 Sup. Ct. Rep. 42; Arkadelphia Mill Co. v. St. Louis Southwestern R. Co., 249 U. S. 134, 151, 63 L. ed. 517, 527, P. U. R. 1919C, 710, 39 Sup. Ct. Rep. 237; McCluskey v. Marysville & N. R. Co., 243 U. S. 36, 38, 61 L. ed. 578, 579, 37 Sup. Ct. Rep. 374; Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 616, 47 L. ed. 328, 332, 23 Sup. Ct. Rep. 206; Capital City Dairy Co. v. Ohio, 183 U. S. 238, 245, 46 L. ed. 171, 175, 22 Sup. Ct. Rep. 120; United States v. E. C. Knight Co., 156 U. S. 1, 12, 13, 39 L. ed. 325, 329, 15 Sup. Ct. Rep. 249; Kidd v. Pearson, 128 U. S. 1, 20, 21, 32 L. ed. 346, 350, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6; Coe v. Errol, 116 U. S. 517, 528, 29 L. ed. 715, 719, 6 Sup. Ct. Rep. 475."

And in the second *Coronado Coal* case,* where it was held, upon a retrial, that a restraint had been made out, the holding was based, not upon the proposition that mining or manufacturing is interstate commerce in and of itself, but that an actual intention to diminish the supply of coal available for shipment in interstate commerce had been made out; quite a different matter, and an element wholly lacking here. See discussion in *Apex Hosiery Co. v. Leader*, 310 U. S. 469 at pp. 511-12.

To put it in a nutshell, apposite decisions of this court reveal that interstate commerce as such in cases of this type is precisely what it was held to be in cases such as *Arkadelphia Co. v. St. Louis S. W. Ry. Co.*, 249 U. S. 134, 151-2, where this court said:

> "Upon the facts as stated, it is our opinion that the district court erred in treating the movement of the rough lumber from the woods to the milling point as interstate commerce. It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, *until it had been subjected to a manufacturing process that materially changed its character, utility, and value.* The raw material came *to rest* at the mill, and after the product was manufactured *it remained stored there for an indefinite period*—manufacture and storage occupying five months on the average—for the purpose of finding a market. *Where it would eventually be sold no one knew.* And the fact that previous experience indicated that 95 per cent. of it must be marketed out-

*United Mine Workers v. Coronado Coal Co., 268 U. S. 310.

side of the State, so that this entered into the purpose of the parties when shipping the rough material to the mill, did not alter the character of the latter movement. The question is too well settled by previous decisions to require discussion."

The foregoing principles are, of course, fully applicable to the manufacture of sugar from sugar beets, and two Federal Court decisions squarely so hold. Both in *United States v. Great Western Sugar Co.*, D. C. Neb., 39 F. (2d) 149 (a Sherman Act case) and in *Utah-Idaho Sugar Co. v. Federal Trade Commission*, 8 Cir., 22 F. (2d) 122, 125-6, it was held that the manufacture of beets into sugar is not interstate commerce, and that there was no commerce to be obstructed until the beets had been manufactured into sugar and the *sugar* placed in transport.

It is also appropriate to point out at this juncture that the Alabama case of *Dothan Oil Mill Co. v. Espy*, 220 Ala. 605, 127 So. 178, which is the closest case to ours we have been able to find on the facts, holds fully in accord with our contentions here. In that case the plaintiffs were engaged in the business of ginning cotton and selling the cotton seed to defendants, who crushed the seed and manufactured therefrom cotton seed oil, some of which was shipped in interstate commerce. Defendants were alleged to have conspired to fix the price to be paid for cotton seed at all points in Alabama, such price being embodied in a uniform sales contract form prepared by the defendants, which plaintiffs alleged they were compelled to sign since defendants were the only buyers in Alabama of any appreciable amount of cotton seed. On appeal from an order overruling defendants' demurrers to plaintiffs' bill to enjoin the above mentioned practice,

the demurrers being interposed partly on the ground that only the federal district court had jurisdiction to grant the relief prayed for, it was held that the order be affirmed. At pages 182-183 the Supreme Court of Alabama said:

> *"We are not of opinion, however, that the business of buying cotton seed, confined wholly to the state, to be crushed and manufactured into oil and other products, in such state, constitutes interstate commerce,* within the scope and purpose of said act or within the sense of the Sherman and Clayton Acts (15 U. S. C. A. §§1-7, 15, and sections 12-27, 44) which confer on the federal courts exclusive jurisdiction to enforce said acts, though some of the manufactured products may eventually find their way into and become commodities of interstate commerce. *'The fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce,'* Crescent Cotton Oil Co. v. State of Mississippi, 257 U. S. 129, 42 S. Ct. 42, 44, 66 L. Ed. 166; Coe v. Errol, 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715; New York Central R. R. Co. v. Mohney, 252 U. S. 152, 40 S. Ct. 287, 64 L. Ed. 502, 9 A. L. R. 496.
>
> Though, under the provisions of section 26, tit. 15, of the United States Code Annotated, a private individual may maintain a suit to enjoin acts interfering with interstate commerce, in a proper case, the acts complained of must be immediately and directly against such commerce. Gable v. Vonnegut Mach. Co. *et al.* (C. C. A.), 274 F. 66; Anderson v. Shipowners' Association of Pacific Coast, 272 U. S. 359, 47 S. Ct. 125, 71 L. Ed. 298.

> These observations are sufficient to justify a denial of appellants' contention that, on the case made by the bill, the Federal District Court, only, has jurisdiction to grant the relief prayed. Home Telephone Co. v. Michigan R. R. Commission, 174 Mich. 219, 140 N. W. 496."

The court then went on to hold that the defendants were amenable to the *state* anti-trust law.*

Petitioners attempt to avoid the effect of the decisions which we cite on the ground that *some* of them stem from the tax case of *Coe v. Errol,* 116 U. S. 517; and they say that since the *Coe* case was cited in *Carter v. Carter Coal Co.,* 298 U. S. 238 and since *that* case in turn was limited, if not overruled by subsequent cases, including *U. S. v. Darby,* which we have cited above, our contentions as to what interstate commerce *is* must be wrong.

With all respect, this does not follow at all. *U. S. v. Darby,* for instance, 312 U. S. at p. 122, squarely holds that the "Sherman and the National Labor Relations Act are familiar examples of the exertion of the commerce power to prohibit or control activities *wholly intrastate* because of their effect *on* interstate commerce." *This language is wholly in accord with our contentions here.* We have reiterated again and again that the pivotal question in this case is whether or not the activities complained of had the effect on interstate commerce which the Sherman Act forbids. But the *Darby* case itself concedes, as we have seen, that manufacture is not interstate commerce; which is our present point.

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*It is not amiss to point out that California, also, has an anti-trust law. Cal. Stats. 1907, ch. 530 as amended; codified 1937 as Business and Professions Code §§16700-16758; see also *Speegle v. Board of Fire Underwriters,* 29 Adv. Cal. 27.

It is also said that in enacting the Sherman Act Congress exercised all of the power which it possessed. But, as pointed out in *Apex Hosiery Co. v. Leader*, 310 U. S. 469 and particularly at pp. 495, 500-501, it was in the sense of preventing restraints on commercial competition with reference to articles or commodities passing in interstate commerce that Congress exercised "all the power it possessed."

Petitioners also argue, of course, that the intrastate activities complained of may not be "insulated" from the operation of the Sherman Act. This point, however, is foreign to the point provoked by them and now under discussion; namely, what *is* interstate commerce so far as processed products of the farm is concerned? It follows that the question of insulation from the operation of the Act may be more properly dealt with when we come to consider whether or not the activities complained of had any substantial economic effect or *any* effect *upon* interstate commerce; a question to which we now turn.

2. *The Amended Complaint Affimatively Discloses That the Activities Complained of Had No Effect Whatever Upon Interstate Commerce, Let Alone the Substantial Economic Effect Condemned by the Sherman Act.*

Nowhere has our position been better stated than in the opinion in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 500-501, where the Court, speaking through Mr. Justice Stone, said:

> "In the cases considered by this court since the Standard Oil Co. case in 1911 some form of restraint of commercial competition has been the *sine*

qua non to the condemnation of contracts, combinations or conspiracies under the Sherman Act, and in general restraints upon competition have been condemned only when their purpose or effect was to raise or fix the market price. It is in this sense that it is said that the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices. Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition. Board of Trade v. United States, 256 U. S. 231, 238, 62 L. Ed. 683, 687, 38 S. Ct. 242, Ann. Cas. 1918D 1207; United States v. United States Steel Corp., 251 U. S. 417, 64 L. Ed. 343, 40 S. Ct. 293, 8 A. L. R. 1121; Cement Mfrs. Protective Asso. v. United States, 268 U. S. 588, 69 L. Ed. 1104, 45 S. Ct. 586; United States v. International Harvester Co., 274 U. S. 693, 71 L. Ed. 1302, 47 S. Ct. 748; Appalachian Coals v. United States, 288 U. S. 344, 375 *et seq.*, 77 L. Ed. 825, 837, 53 S. Ct. 471."

This Court thus plainly held that in order to constitute a substantial economic effect upon interstate commerce there must be a restraint (a) upon a commodity moving in interstate commerce which (b) affects its market price or (c) otherwise adversely affects purchasers or consumers of such commodity.

The application of these principles to the case at bar is purely a matter of appraising the facts alleged. We know that the beets did not move, nor were they ever

intended to move, in interstate commerce. We likewise know that petitioners have actually disclaimed any restraint as to the *sugar*, the product which *did* move in interstate commerce; nor has it ever been claimed that either the price or the supply of the sugar was ever affected or that the purchasers or consumers of the sugar were deprived of any advantage whatever. The result is that the amended complaint, as held by both courts below, wholly failed to show a violation of the Sherman Act under the very tests laid down by this Court; and not a single authority cited by petitioners even hints to the contrary.

It thus follows that this cannot properly be said to be a situation where intrastate activities are sought to be "insulated" from the operation of the Act. This is a case where the Act simply has no application for the simple reason that interstate commerce was not affected at all. The *Frankfort Distilleries* case, 324 U. S. 293, is perhaps the leading decision which comes to mind when the word "insulation" is mentioned. But there the restraint directly affected the price of the very commodities which had passed in interstate commerce; the precise situation envisaged in the *Apex Hosiery* case.

The same considerations would apply, of course, as to restraints sought to be imposed upon commodities entering the stream of interstate commerce. The second *Coronado Coal Co.* case is, as we have seen, direct authority for the proposition that intrastate activities will not be "insulated" from the operation of the Act where they are aimed at affecting the price or supply of the interstate commodity *after* it has started its journey. But again, this is not such a case. Petitioners neither allege nor claim that the *sugar*—the interstate commodity here

involved—was affected in the least by the activities of which they complain. For this reason none of the Sherman Act cases which they cite are of assistance here because without material exception they dealt with such a situation as we would have here if the price of the *sugar* had been fixed at destination; that is to say, if the price of the very commodity passing through interstate channels had been fixed by agreement. *But this is not and never has been such a case.*

We now turn to the failure of the amended complaint to show any adverse effect upon the public interest; an element which, as we have seen, is an essential in any attempt by a private party to recover under the Sherman Act.

B. The Amended Complaint Failed to State a Claim Because It Affirmatively Appears Therefrom That the Activities Complained of Did Not Result in Any Violation of or Injury to the Public Rights Which It Is the Purpose of the Sherman Act to Protect.

It is not open to dispute that the purpose of the Sherman Act is to protect the public from monopolies and restraints of trade with reference to commodities passing in interstate commerce; and that the individual right of action conferred by 15 U. S. C. §15 is wholly incidental to this fundamental purpose. Thus a complaint in such a case must show "not only damages sustained by the individual plaintiff but even more importantly a violation of public rights prohibited by the Act." *Wilder Mfg. Co. v. Corn Products Co., supra*, 236 U. S. 165, 174.

Petitioners made no showing whatever with reference to this important element of their cause of action. There

was no consuming public so far as the beets were concerned. The only segment of the public which could have been involved under the facts of this case would have been the purchasers or consumers of the sugar, for this was the only commodity which reached the public, either through the channels of interstate commerce or otherwise. True, the amended complaint attempts to set up damage so far as the individual petitioners are concerned; but it utterly fails to allege one single fact which would show that the rights of the *public* were in any way affected. It follows that the complaint was therefore necessarily deficient in this regard for the same reasons that we have discussed above; since the activities complained of did not have *any* effect upon interstate commerce, they likewise failed to have any effect upon the public right protected by the Act; namely, the right to free and open markets in interstate commerce.

As to this, petitioners assert that price-fixing is unlawful *per se* under the Sherman Act. This, of course is true only where interstate commerce is adversely affected; and as we have seen, this is not such a case.

It is next said that the American public is "interested" in preserving competition among the buyers of sugar beets. This would be true in the sense under discussion only if the beets had passed in interstate commerce (which they did not) and had been bought by the public (which they were not) or, if, in the alternative, the lack of competition complained of had been reflected in the prices of

the sugar which the public *did* buy (which, again, it was not).

The plain fact is that petitioners cannot even show a uniformity of interest as to the very group to which they belong, namely, the beet growers of northern California. As the District Judge so plainly pointed out, since they claim damage because of an *averaging* of the net return to the processors, it is not open to dispute that while the petitioners may have suffered a detriment, the growers who delivered their beets to the other processors mentioned in the amended complaint necessarily received a compensating advantage. [R. 102.] Petitioners, despite their present protestations to the contrary, obviously admit this when they concede that respondent's payments for beets before 1939 and after 1941, made on the basis of its *own* net returns, *were* competitive [R. 77, Amd. Comp., par. X], a fact which, in turn, also effectually and in any event minimizes their claim of public interest, since the practices complained of ceased some six years ago. The public is not interested in stale private claims.

Conclusion.

We shall not take the time nor the space to discuss in detail the authorities cited by petitioners in support of their contentions. Where a question such as the present is concerned, it is always possible to pick up isolated quotations from random cases which will support any thesis. We have endeavored to set out, as we understand them, the guiding principles which are applicable to such

a case as this; and it seems to us that they all sum up to the basic question first mentioned by us: Did or did not the activities complained of have that substantial economic effect upon interstate commerce which the Sherman Act proscribes. And it is respectfully urged that this question should surely be answered in the negative.

Respectfully submitted,

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